



MAINE REVENUE SERVICES SALES, FUEL & SPECIAL TAX DIVISION INSTRUCTIONAL BULLETIN NO. 9

CASUAL AND INFREQUENT SALES

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding issues commonly faced by your business. Portions of the Sales and Use Tax Law (Title 36 of the Maine Revised Statute) referred to in this bulletin can be found at the end of the bulletin in Attachment #1.

1. CASUAL SALES GENERALLY

Casual sales, other than casual sales of the kinds of property listed in Section 3, are not subject to sales or use tax. A "casual sale" is an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character.

2. NONTAXABLE CASUAL SALES

The following are examples of casual sales. Unless the property sold is of one of the kinds listed in Section 3, it is not subject to sales or use tax.

- a. Isolated sales of a nonrecurring nature made by a person who is not engaged in the business of selling tangible personal property or taxable services.
- b. Sales of tangible personal property originally acquired for use or other consumption by a retailer or seller, which is not of the same kind as that sold in the regular course of any business engaged in by that retailer or seller.
- c. Sales made by a personal representative in the settlement of an estate, unless those sales continue the operation of a retail business or are made by a retailer.
- d. The sale of an entire business by the owner (but see Section 4(c) below).
- e. Judicial sales, executions, etc., unless made by a registered retailer.
- f. Sales by a person engaged in a business or occupation such as manufacturing or farming, of used machinery, fixtures, equipment or similar items when the seller is not engaged in the business of selling those items.
- g. Sales, including sales of meals, by a civic, religious or fraternal organization at bazaars, fairs, rummage sales, picnics or similar events, provided that the organization is not required to have a seller's registration certificate.

3. TAXABLE CASUAL SALES

Section 1764 of the Sales and Use Tax Law imposes the use tax on casual sales of the following kinds of property:

- a. Motor vehicles
- b. Aircraft
- c. Trailers
- d. Special mobile equipment (except farm tractors, lumber harvesting vehicles or loaders, and lawn and garden tractors)
- e. Truck Campers; and
- f. Watercraft

Definitions of these kinds of property can be found in Instruction Bulletin No. 24.

If a watercraft, aircraft or motor vehicle is sold at casual sale and the seller does not report and pay tax on the transaction, tax will be collected from the purchaser by the registering agency as a prerequisite to registration.

4. TAXABLE TRANSACTIONS SIMILAR TO CASUAL SALES

The following are examples of transactions which, although they may appear to resemble casual sales, are treated by the law as retail sales. Sales of the kinds listed below are subject to Maine sales or use tax in the same way as other retail sales.

- a. A sale made in the ordinary course of business by a registered retailer on behalf of the owner, even though the owner is not in the business of making such sales. A retailer has the same duties when making sales of property belonging to another as when selling the retailer's own goods.
- b. A sale made in the ordinary course of business by a retailer to a purchaser who is not engaged in selling that kind of tangible personal property or taxable service in the ordinary course of repeated and successive transactions of like character
- c. The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:
 - (1) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease or rental in the ordinary course of business; or
 - (2) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business or that purchases the assets for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease or rental by the affiliate in the ordinary course of business.

For purposes of this provision, "affiliate" or "affiliated" includes both direct and indirect affiliates.

- d. Retail sales by a manufacturer, wholesaler, processor or jobber of the kinds of property ordinarily produced or sold by that business, even though retail sales are infrequent and comprise only a small fraction of the total sales of that business.
- e. Sales that are an integral part of a business, such as the sale of repossessed personal property by a bank or finance company, even though the sale of tangible personal property is not the primary activity of that business.
- f. Sales by lessors of personal property previously rented or leased.

5. SALES BY NONPROFIT ORGANIZATIONS

When civic, religious, fraternal and other nonprofit organizations conduct fund raising campaigns of limited duration involving the sale of candy, light bulbs, novelties or other tangible personal property, those sales qualify as casual sales which are not taxable unless the organization is registered or required to be registered as a seller.

Any nonprofit organization is required to register as a seller under the Sales and Use Tax Law if it engages in sales of tangible personal property or taxable services on a continuing basis or if it continuously holds itself out to the public as a seller. If an organization is registered as a seller, all sales made by it, regardless of location or the type of event, are subject to tax.

a. Nonprofit organizations that are not registered as a seller. Although the organization would not collect tax on its sales, it must pay sales tax to the vendor when purchasing the goods it intends to sell. If tax is not paid to the vendor (as, for example, when the goods are bought from an out-of-state vendor not registered to collect Maine tax), the organization should remit tax directly to Maine Revenue by check or money order made payable to the State Treasurer. The tax is based on the cost of the goods multiplied by the applicable sales tax rate. Payment should be accompanied by a brief letter explaining the reason for the payment.

b. Nonprofit organizations that have been granted a sales and use tax exemption by Maine Revenue Services. The organization would not collect tax on its sales and would not pay tax to the vendor on the goods it intends to sell since all of its purchases are exempt. The organization should present its exemption certificate to the supplier to document the exempt purchase. Additionally, the organization would not be liable for use tax if the purchase was made from an out-of-state vendor who is not registered to collect Maine tax.

c. Nonprofit organizations that are registered or are required to be registered as a seller. The organization must collect and remit sales tax on all its sales. The organization does not pay sales tax to the vendor since the purchase is being made for resale. The organization should present a resale certificate to the vendor to document the exempt purchase.

An organization that is registered as a seller does not have the option of paying tax to its suppliers and selling tax-free.

6. YARD SALES, LAWN SALES AND GARAGE SALES

When individuals who are not in the business of selling that kind of property dispose of their own used household items by selling them at a yard sale or similar event, or by placing an advertisement in the classified section of a newspaper, they are making casual sales. Persons in this situation are not required to register as sellers or to collect sales or use tax from their customers. If the property sold is a motor vehicle, aircraft, watercraft, trailer or special mobile equipment, the purchaser is responsible for payment of the tax directly to the State.

So-called yard sales that are operated on a continuing basis or include items produced or acquired for resale by the seller are not casual sales. Persons who operate businesses of this type are required to register as sellers under the Sales and Use Tax Law and to collect, report and remit Maine sales tax in the same way as other retailers. If used household items are intermingled with items produced or acquired for resale, all sales are subject to tax.

7. ADDITIONAL INFORMATION.

The information in this bulletin addresses some of the more common questions regarding the Sales and Use Tax Law faced by your business. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question and should be directed to the:

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ATTACHMENT #1
Excerpts taken from Maine Revised Statutes, Title 36

§1752. Definitions

The following words, terms and phrases when used in chapters 211 to 225 have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

1-D. Casual sale. "Casual sale" means an isolated transaction in which tangible personal property or a taxable service is sold other than in the ordinary course of repeated and successive transactions of like character by the person making the sale. "Casual sale" includes transactions at a bazaar, fair, rummage sale, picnic or similar event by a civic, religious or fraternal organization that is not a registered retailer. The sale by a registered retailer of tangible personal property that that retailer has used in the course of the retailer's business is not a casual sale if that property is of like character to that sold by the retailer in the ordinary course of repeated and successive transactions. "Casual sale" does not include any transaction in which a retailer sells tangible personal property or a taxable service on behalf of the owner of that property or the provider of that service.

10. Retailer. "Retailer" means any person who makes retail sales or who is required to register by section §1754-A or §1754-B or who is registered under section §1756.

11. Retail sale. "Retail sale" means any sale of tangible personal property in the ordinary course of business for any purpose other than for resale, except resale as a casual sale, in the form of tangible personal property. "Retail sale" also means any sale of a taxable service in the ordinary course of business for any purpose other than for resale, except resale as a casual sale.

A. "Retail sale" includes:

- (1) Conditional sales, installment lease sales and any other transfer of tangible personal property when the title is retained as security for the payment of the purchase price and is intended to be transferred later;
- (2) Sale of products for internal human consumption to a person for resale through vending machines when sold to a person more than 50% of whose gross receipts from the retail sale of tangible personal property are derived from sales through vending machines. The tax must be paid by the retailer to the State;
- (3) A sale in the ordinary course of business by a retailer to a purchaser who is not engaged in selling that kind of tangible personal property or taxable service in the ordinary course of repeated and successive transactions of like character; and

(4) The sale or liquidation of a business or the sale of substantially all of the assets of a business, to the extent that the seller purchased the assets of the business for resale, lease or rental in the ordinary course of business, except when:

(a) The sale is to an affiliated entity and the transferee, or ultimate transferee in a series of transactions among affiliated entities, purchases the assets for resale, lease or rental in the ordinary course of business; or

(b) The sale is to a person that purchases the assets for resale, lease or rental in the ordinary course of business or that purchases the assets for transfer to an affiliate, directly or through a series of transactions among affiliated entities, for resale, lease or rental by the affiliate in the ordinary course of business.

For purposes of this subparagraph, "affiliate" or "affiliated" includes both direct and indirect affiliates.

B. "Retail sale" does not include:

(1) Any casual sale;

(2) Any sale by a personal representative in the settlement of an estate, unless the sale is made through a retailer, or unless the sale is made in the continuation or operation of a business;

(3) The sale, to a person engaged in the business of renting automobiles, of automobiles, integral parts of automobiles or accessories to automobiles, for rental or for use in an automobile rented on a short-term basis;

(4) The sale, to a person engaged in the business of renting video media and video equipment, of video media or video equipment for rental;

(5) The sale, to a person engaged in the business of renting or leasing automobiles, of automobiles for rental or lease for one year or more;

(6) The sale, to a person engaged in the business of providing cable or satellite television services, of associated equipment for rental or lease to subscribers in conjunction with a sale of extended cable or extended satellite television services;

(7) The sale, to a person engaged in the business of renting furniture, or audio media and audio equipment, of furniture, audio media or audio equipment for rental pursuant to a rental-purchase agreement as defined in Title 9-A, section 11-105; or

(8) The sale of loaner vehicles to a new vehicle dealer licensed as such pursuant to Title 29-A, section 953. For purposes of this subparagraph, "loaner vehicle" means an automobile to be provided to the dealer's service customers for short-

term use free of charge pursuant to the dealer's franchise, as defined in Title 10, section 1171, subsection 6.

13. Sale. "Sale" means any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and includes leases and contracts payable by rental or license fees for the right of possession and use, but only when such leases and contracts are deemed by the State Tax Assessor to be in lieu of purchase.

§1764. Tax against certain casual sales

The tax imposed by chapters 211 to 225 must be levied upon all casual rentals of living quarters in a hotel, rooming house or tourist or trailer camp and upon all casual sales involving the sale of trailers, truck campers, motor vehicles, special mobile equipment except farm tractors and lumber harvesting vehicles or loaders, watercraft or aircraft except those sold for resale at retail sale or to a corporation, partnership, limited liability company or limited liability partnership when the seller is the owner of a majority of the common stock of the corporation or of the ownership interests in the partnership, limited liability company or limited liability partnership. This section does not apply to the rental of living quarters rented for a total of fewer than 15 days in the calendar year, except that a person who owns and offers for rental more than one property in the State during the calendar year is liable for collecting sales tax with respect to the rental of each unit regardless of the number of days for which it is rented.